

## Office of the Secretary, Interior

## § 4.1360

or operator has agreed to bear the expense for this service. The preliminary finding must specifically state the violations upon which it is based.

[67 FR 61511, Oct. 1, 2002]

### § 4.1352 Who may file; where to file; when to file.

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of permanent permit ineligibility.

(b) The request for hearing must be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800), within 30 days of receipt of the preliminary finding by the applicant or operator.

(c) Failure to file a timely request constitutes a waiver of the opportunity for a hearing before OSM makes its final finding concerning permanent permit ineligibility. Any untimely request will be denied.

[67 FR 61511, Oct. 1, 2002]

### § 4.1353 Contents of request.

The request for hearing shall include—

(a) A clear statement of the facts entitling the one requesting the hearing to administrative relief;

(b) An explanation of the alleged errors in OSM's preliminary finding; and

(c) Any other relevant information.

### § 4.1354 Determination by the administrative law judge.

The administrative law judge shall promptly set a time and place for and give notice of the hearing to the applicant or operator and shall issue a decision within 60 days of the filing of a request for hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

### § 4.1355 Burden of proof.

OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regula-

tions, the regulatory program, or the permit.

[67 FR 61511, Oct. 1, 2002]

### § 4.1356 Appeals.

(a) Any party aggrieved by the decision of the administrative law judge may appeal to the Board under procedures set forth in § 4.1271 *et seq.* of this subpart, except that the notice of appeal must be filed within 20 days of receipt of the administrative law judge's decision.

(b) The Board shall order an expedited briefing schedule and shall issue a decision within 45 days of the filing of the appeal.

REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF APPLICATIONS FOR NEW PERMITS, PERMIT REVISIONS, PERMIT RENEWALS, THE TRANSFER, ASSIGNMENT OR SALE OF RIGHTS GRANTED UNDER PERMIT (FEDERAL PROGRAM; FEDERAL LANDS PROGRAM; FEDERAL PROGRAM FOR INDIAN LANDS) AND FOR COAL EXPLORATION PERMITS (FEDERAL PROGRAM)

SOURCE: 56 FR 2143, Jan. 22, 1991, unless otherwise noted.

### § 4.1360 Scope.

These rules set forth the exclusive procedures for administrative review of decisions by OSMRE concerning—

(a) Applications for new permits, including applications under 30 CFR part 785, and the terms and conditions imposed or not imposed in permits by those decisions. They do not apply to decisions on applications to mine on Federal lands in states where the terms of a cooperative agreement provide for the applicability of alternative administrative procedures (see 30 CFR 775.11(c)), but they do apply to OSMRE decisions on applications for Federal lands in states with cooperative agreements where OSMRE as well as the state issue Federal lands permits;

(b) Applications for permit revisions, permit renewals, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revisions ordered by OSMRE;

(d) Applications for coal exploration permits; and